

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL -8 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0032-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
RICHARD RAYMOND LANE,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20072190

Honorable Hector Campoy, Judge

REVIEW GRANTED; RELIEF DENED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Robert J. Hirsh, Pima County Public Defender
By Kristine Maish

Tucson
Attorneys for Petitioner

HOWARD, Chief Judge.

¶1 Petitioner Richard Lane seeks review of the trial court’s order denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. Absent a clear abuse of discretion, we will not disturb the trial court’s ruling. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We see no such abuse here.

¶2 Pursuant to a plea agreement entered in May 2008, Lane was convicted of second-degree burglary of a residential structure and aggravated harassment. After an extensive aggravation/mitigation hearing, the trial court sentenced Lane to an aggravated, five-year term of imprisonment for the burglary and suspended the imposition of sentence on the harassment conviction, placing Lane on probation for a three-year term that begins when he is released from prison.

¶3 In the petition for post-conviction relief Lane subsequently filed, he challenged the aggravated prison term on three grounds: (1) information regarding his health problems constituted newly discovered evidence as contemplated by Rule 32.1(e), entitling him to be resentenced to the presumptive term; (2) trial counsel had been ineffective at sentencing because she failed to present evidence about Lane’s “debilitating health issues in mitigation” and failed “to seat a shackled Mr. Lane next to [her] at the aggravation hearing to enable adequate communication”; and, (3) the aggravated term is excessive in light of the evidence in mitigation. The trial court denied relief without an evidentiary hearing.

¶4 In this petition for review, Lane argues he presented colorable claims and, therefore, the trial court abused its discretion in summarily dismissing his request for post-conviction relief. In a thorough, well-reasoned minute entry, the trial court

identified all claims Lane had raised and resolved them correctly and in a manner permitting any court to review and determine the propriety of that ruling. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Lane has not persuaded us on review that the trial court abused its discretion in denying post-conviction relief. No purpose would be served by reiterating the court's ruling in its entirety; rather, we adopt it.

¶5 The petition for review is granted but, for the reasons stated, we deny relief.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Judge